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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

No. 85-873

WILLIAM K. BUNYAN,

Respondent,

-against-

LUIS M. CAMACHO, DON C. WARNER, BERTHA L. DUENAS, FRANK C. CRUZ, and JESUS B. PAULINO,

Petitioners.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT WILLIAM K. BUNYAN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

1. THE PARTIES

Plaintiff/Respondent is a teacher in the Territory of Guam. Defendants/

Petitioners are on the Board of Directors of the Guam Retirement Fund.

2. **THE FACTS**

Plaintiff obtained his Bachelor of Science from Kansas State College in 1958 and his Master of Science from Kansas State University in 1959. At the time Plaintiff started his studies for his Bachelor of Science and his Master of Science, Plaintiff was a resident of the State of Kansas.

Plaintiff started working as a teacher for the Government of Guam in the Department of Education in 1963. Plaintiff is presently a science teacher at George Washington High School in the Territory of Guam.

In 1978, the Guam Legislature enacted §8113(b), Government Code Annotated. Section 8113(b) gives a retirement credit

to Government of Guam employees if, and only if, they were residents of Guam when they started college.

Section 8113(b) applies both prospectively and retrospectively. The statute's retrospective application distinguishes between two classes of present Guam residents that began working for the Government of Guam before 1978. One class of present Government of Guam employees resided in Guam when they started college. Section 8113(b) operates retrospectively to give this class a retirement credit. One class of present Government of Guam employees did not reside in Guam when they started college. Section 8113(b) denies this class a retirement credit. Plaintiff is in the latter class.

On June 7, 1984, Plaintiff filed suit in the District Court of the Territory of Guam, contending that the retrospective discrimination of §8113(b) is violative of the Equal Protection Clause of the United States Constitution.

3. **PRIOR PROCEEDINGS**

In his complaint filed in the District Court of the Territory of Guam, on June 7, 1984, Plaintiff alleged that the retrospective discrimination of §8113(b) was in violation of the Equal Protection Clause of the United States Constitution as it applied to Guam in Title 48, United States Code §§1421b(n) and 1421b(u). Plaintiff requested that the retrospective discrimination of §8113(b) be declared unconstitutional and that Defendants be enjoined from enforcing §8113(b).

On August 27, 1984, Plaintiff filed a motion for summary judgment. Plaintiff moved for summary judgment on the grounds that this statute was unconstitutional because it did not advance a compelling state interest and did not withstand scrutiny under the rational basis test.

On September 14, 1984, Defendants filed their cross-motion for summary judgment. Defendants advanced numerous arguments and cited numerous cases in support of their cross-motion for summary judgment.

The matter came before the District Court of Guam on September 21, 1984. Plaintiff testified at the hearing.

On October 23, 1984, the District Court of Guam issued its Memorandum Order. In its Memorandum Order the District Court concluded that there existed no material issues of fact in dispute and that

Defendants were entitled to summary judgment as a matter of law. The District Court accordingly ordered judgment to be entered in favor of all Defendants. This judgment was entered on November 16, 1984.

Plaintiff appealed from the final judgment entered on November 16, 1984. This notice of appeal was timely filed on November 20, 1984.

On September 4, 1985, the United States Court of Appeals for the Ninth Circuit issued its Opinion in the case and reversed the decision of the District Court of the Territory of Guam. Defendants have now filed a petition for certiorari in the Supreme Court of the United States.

REASONS FOR DENYING THE WRIT

Defendants have advanced four arguments in support of their Writ. Each of these

arguments is erroneous and the Writ should be denied.

1. A Government May Not Legitimately Attempt tc Limit Its Expenditures By Discriminating Between Classes of Its Own Citizens.

Defendants contend that the holding of the United States Court of Appeals for the Ninth Circuit can "potentially allow large numbers of previously unqualified individuals to purchase additional retirement credit" and that such "a situation would impose additional liabilities on the fund for which it is ill-prepared." Pet. at 6. There is nothing in the factual record to support this argument but, assuming that this economic argument has any validity whatsoever, a state may not legitimately attempt to limit its expenditures by discriminating between classes of its own citizens.

> We recognize that a state has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a state may not accomplish such a purpose by invidious distinctions between classes of its own citizens. Shapiro v. Thompson, 89 S.Ct. 1322, 1330 (1969).

2. The Retrospective Discrimination of §8113(b) Does Not Operate As An Incentive For People Who Are Already Working For the Government of Guam

Defendants argue that "the Government of Guam wants to encourage its residents to seek higher education and then return to Guam and enter public employment once they have done so" and that statutes such as §8113(b) "serve these purposes." Pet. at 7. Assuming that §8113(b) does serve as an incentive for Guam residents to return to Guam after they have obtained their education, this particular statute

could not possibly serve as such an incentive when applied retrospectively. The people who were working for the Government of Guam (such as Plaintiff), when §8113(b) was enacted, had already returned to the Territory of Guam and were already working for the Government of Guam. Also, even as to the prospective application of §8113(b), there is no reason why the Government of Guam should encourage former Guam residents to work for the Government of Guam to the exclusion of other citizens of the United States who were not residing in Guam when they started college.

3. Long-Term Residents Are Not Better Citizens.

Defendants submit that "long-term residents are generally more familiar with local problems and concerns and are

therefore, more capable employees than those who grew up elsewhere." Pet. at 7. Two points must be made about this particular contention. First, this contention cannot justify the retrospective discrimination of §8113(b). Respondent has lived in the Territory of Guam since the early 1960s, and it is hard to argue that he is not familiar with local problems and concerns. Second, if permitted, Defendants' argument would allow and encourage the States to retreat into ethnocentrism by granting long-term residents special privileges and benefits, simply because these long-term residents are allegedly "more familiar" with local problems and concerns. This type of social behavior should not be allowed in any modern industrial society which by its very nature must depend on the mobility of its citizens.

4. The United States Court of Appeals for the Ninth Circuit Did Not Misapply the Holdings in Zobel and Hooper.

In Zobel v. Williams, 102 S. Ct. 2309 (1982) and Hooper v. Bernalillo County Assessor, 53 U.S. L.W. 4827 (U.S. June 24, 1985), the Supreme Court of the United States addressed factual situations wherein certain states attempted to bestow benefits on long-term residents. The United States Court of Appeals for the Ninth Circuit relied upon the holdings in Zobel and Hooper, and determined that the retrospective discrimination of §8113(b) was in violation of the Equal Protection Clause of the United States Constitution.

The holding of the United States Court of Appeals for the Ninth Circuit in this action is in accord with the reasoning in Zobel and Hooper. This reasoning

is most clearly stated by the concurring Justices in Zobel.

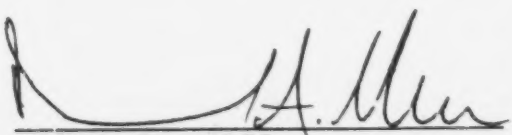
> The Fourteenth Amendment guarantees the equal protection of the law to anyone who may be within the territorial jurisdiction of a State. That amendment does not suggest by its terms that equal treatment might be denied a person depending upon how long that person has been within this jurisdiction of the state. The Fourteenth Amendment does, however, expressly recognize one elementary basis for distinguishing between persons who may be within a state jurisdiction at any particular time by setting forth the requirement for state citizenship. But it is significant that the citizenship clause of the Fourteenth Amendment expressly equates citizenship only with simple residence. That clause does not provide for, and does not allow for, degrees of citizenship based on length of residence. And the Equal Protection Clause would not tolerate such distinctions. In short, as much as the right to travel, the quality of citizenship is of the essence in our republic. As the Court notes, states may not "divide

citizens into expanding numbers of permanent classes." Zobel, 72 L. Ed. 2d at 683-684.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

Respectively submitted,



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